

AGREEMENT FOR PUBLIC TRANSIT SERVICES

1.0 INTRODUCTION

The Jamestown S'Klallam Tribe, ("TRIBE") is continuing transit service, using a Federal Transit Authority Section 5311(c) Non-urbanized Area Funds ("FTA") grant, for public transportation. This service was initially established in 2010 with funding from the FTA and Clallam Transit was contracted to provide the service. In order to continue services to the TRIBE and its facilities in Blyn, Washington, and to serve their tribal citizens and tribal employees by these services, the TRIBE enters this Agreement with the Clallam Transit System ("CTS").

The services are more fully described in Exhibit 1 – Scope of Work, included by this reference as a part of this Agreement. Payment for the services are more fully described in Exhibit 2 – Consideration, included by this reference as part of this Agreement.

The address of and contact for the TRIBE is:

The Jamestown S'Klallam Tribe
1033 Old Blyn Hwy.
Sequim, WA 98382
Annette Nesse, Chief Operations Officer
E-mail: anesse@jamestowntribe.org
Phone: 360 681-2620
FAX: 360-582-5780

The address of the CTS is:

Clallam Transit System
830 W. Lauridsen Blvd.
Port Angeles, WA 98363
Terry Weed, General Manager
Phone: 360 452-1315
FAX: 360 452-1316

2.0 PERIOD OF PERFORMANCE

- 2.1 Performance under this Agreement commenced on October 27, 2010 for an initial two year term and is hereby extended to December 31, 2013 ("INITIAL TERM").
- 2.2 The INITIAL TERM may be extended, by an amendment to this Agreement signed by both parties, if the TRIBE receives additional funding for services beyond the initial term.

3.0 PERFORMANCE BOND

The TRIBE agrees that the CTS need not provide a performance bond. However, the TRIBE expects the CTS to perform in good faith to meet the requirements of the Agreement.

4.0 REVISIONS TO AGREEMENT

In the event that it becomes necessary to revise any part of this Agreement, the parties may do so by mutual agreement evidenced by a written amendment to this Agreement. Either party must give thirty (30) days notice of their intent to revise this Agreement, and

the responding party shall have ten (10) days to respond to the request to revise the Agreement.

5.0 LIMITATION ON FUNDING/RESERVED RIGHTS

The CTS is notified that this Agreement for this service is contingent upon grant funds being provided to the TRIBE by the FTA pursuant to a grant award, Project No.: WA-18-X047-00. In the event that funding for this service is eliminated or decreased, either party reserves the right to terminate the Agreement or modify it accordingly.

6.0 EQUAL EMPLOYMENT OPPORTUNITY

The CTS shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran. The CTS will take affirmative action to insure that all employees are treated during employment, without regard to their race, color, religion, sex, national origin, age, marital status, being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran. Such action shall include, but not be limited to, the following: employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship.

The CTS will furnish all necessary information and reports to the FTA to ascertain compliance with the nondiscrimination/disadvantaged business provisions of this Agreement.

7.0 UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES

In connection with the performance of this Agreement, the CTS will make a good faith effort to achieve its annual disadvantaged business enterprises goal.

8.0 NONCOMPLIANCE

In the event of the CTS's noncompliance with the nondiscrimination/disadvantaged business provisions of this Agreement, the TRIBE shall impose such sanctions as it may determine to be appropriate, including but not limited to:

8.1 Withholding payments under the Agreement until the CTS complies; and/or,

8.2 Cancellation, termination, or suspension of the Agreement in whole or in part.

9.0 AUDIT AND INSPECTION OF RECORDS

The CTS shall permit authorized representatives of the TRIBE or its designee to inspect and audit the CTS's data, facilities, vehicles, and records relating to this Agreement. Unsubstantiated statements or refusal to permit audit or inspection may cause the Agreement to be terminated.

10.0 BUY AMERICA CLAUSE

The Buy America Clause provides that federal funds may not be obligated for mass transportation projects unless steel, cement, and manufactured products used in such

projects are produced in the United States. The requirement will not apply in any of the following four cases:

- 10.1 When its application is against the public interest (as decided by the FTA Administrator on a case by case basis.)
- 10.2 When the required materials and products are not produced in the U.S. in sufficient quantities and/or of satisfactory quality.
- 10.3 When, in the procurement of buses and other rolling stock, the cost of the components which are produced in the U.S. is more than 60 percent of the cost of all components of the vehicle or equipment, and if the final assembly takes place in the U.S.
- 10.4 When the inclusion of domestic material will increase the overall cost of the project Agreement by more than ten percent in the case of projects for the acquisition of buses and rolling stock, and 25 percent in the case of all other projects.

11.0 INSURANCE, RISK CONTROL AND SAFETY

The CTS will be performing the work under this Agreement as the TRIBE's independent Contractor. This Agreement will require minimum insurance amounts to be obtained and maintained by the CTS, as noted in the Scope of Work in Exhibit 1 attached hereto.

12.0 LOBBYING PROHIBITION

The CTS will comply with all applicable requirements of Title 31 U.S.C. Section 1352 and warrants that its activities and those of its officers, agents, and employees comply, and shall continue to comply, with all applicable prohibitions against spending federal funds for lobbying.

13.0 COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA) AS APPLICABLE

The CTS agrees to comply with the applicable provisions of IRCA in performing under the Agreement and to permit the TRIBE to inspect its personnel records to verify such compliance.

14.0 LABOR MANAGEMENT

The CTS shall fully cooperate with the TRIBE in meeting the applicable legal requirements of the labor protective provisions of Section 13 (c) (Exhibit F) of the Federal Transit Act of 1964, as amended, (49 U.S.C. 1609). Changes, including changes in service, and any other changes which may adversely affect transit employees, shall be made only after due consideration of the impact of such changes on Section 13 (c) protection granted to employees.

The CTS shall defend and indemnify the TRIBE from all costs, claims, and losses due to the 13(c) consequences of changes made by the CTS that are not requested by the TRIBE and which result in Section 13 (c) grievances, claims, and/or liability.

15.0 INDEMNITY AND HOLD HARMLESS

The CTS agrees to indemnify, defend, save and hold harmless the TRIBE and its officers, agents, contractors, employees and citizens from and against any and all claims, demands, losses, damages, expenses, liabilities, suits, actions, proceedings, or costs of every kind and description (including attorney's fees) arising, in whole or in part, from the performance of the indemnifying party or its officers, agents, contractors or employees under this Agreement.

Without limiting the broad scope of the indemnity provisions set forth in the above paragraph, said indemnity includes, but is in no way limited to, claims, demands, losses, damages, expenses, liabilities, suits, actions, proceedings, or costs of every kind and description (including attorney's fees) arising from:

- 15.1. The injury to, or death of, any person or the loss of, or damage to, any property when such injury, death, loss, or damage is due, in whole or in part, to the negligent, intentional or willful act of omission of either party or of its officers, agents, or employees; and
- 15.2. The CTS's employment agreement or agreements regarding salary, fringe benefits, retirement benefits, layoff, demotion, promotion, termination or other internal personnel disputes between the CTS and any of its officers, agents, or employees, whether brought individually, as a group, or as a labor bargaining or negotiation unit or entity.

16.0 DEBARRED CONTRACTOR

The CTS, including any of its officers or the holders of a controlling interest therein, is obligated to inform the TRIBE at the time of executing this Agreement whether or not it is, or has been, on any debarred contractor's list maintained by the United States Government. Should the CTS be included on such a list during the performance of this Agreement, it shall so inform the TRIBE.

17.0 INTERESTS OF MEMBERS OF OR DELEGATES TO CONGRESS AND OTHERS

In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising there from, other than as a member of the public making use of the normal transit services provided by the CTS.

18.0 ENERGY EFFICIENCY

The CTS shall recognize the applicable mandatory standards and policies relating to energy efficiency that are contained in the Washington State Energy Conservation Plan issued in accordance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

19.0 ENVIRONMENTAL REQUIREMENTS

For all agreements in excess of \$100,000, the CTS agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7602), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 C.F.R. Part 15) which prohibit the use of facilities included on the EPA List of Violating Facilities when performing under nonexempt

federal agreements, grants or loans. The CTS shall report violations to FTA and to the U.S. EPA Assistant Administrator for Enforcement.

20.0 INDEPENDENT CONTRACTOR

Under the terms of this Agreement, the CTS is an independent contractor and has and retains full control and supervision over the services performed by all persons assisting in its performance, and of employment and direct compensation and discharge of all persons, other than employees of the TRIBE assisting in the performance of its services hereunder. The CTS agrees to be solely responsible for all matters relating to wages, hours of work, and working conditions and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters. The CTS agrees to be responsible for its own acts and those of its subordinates, employees and any and all subcontractors if any, during the term of this Agreement.

21.0 INSPECTION OF WORK/SERVICES

All work (which term in this Section includes services performed, and material utilized in the performance of services) shall be subject to inspection and test per compliance with FTA.

22.0 INCORPORATION BY REFERENCE

The following documents are incorporated by reference and made a part of this Agreement:

- 22.1 U.S. Department of Transportation, Federal Transit Administration, Grant Agreement (FTA G-16, October 1, 2009) between the TRIBE and the FTA;
- 22.2 Federal Transit Administration Master Agreement (FTA MA (16), October 1, 2009); and
- 22.3 The Certifications and Assurances submitted by the TRIBE to FTA as part of the grant application process.
- 22.4 The Certifications and Assurance submitted by the CTS to FTA as a part of their annual certification process for receiving federal grants.

23.0 JURISDICTION AND VENUE

This agreement shall be governed and interpreted by the laws of the State of Washington with venue in the state court located in Clallam County Washington.

24.0 ASSIGNMENT OR TRANSFER

The CTS shall not assign, transfer or encumber this Agreement or rights granted or any portion thereof, without the prior written consent of the TRIBE and any attempt to assign, transfer, or encumber without such prior written consent shall be void.

IN WITNESS WHEREOF, the parties hereto have affixed the signatures of their duly authorized official:

For: The Jamestown S'Klallam Tribe

Annette Nesse
By: Annette Nesse, Chief Operations Officer

10/26/12
Date

For: The Clallam Transit System

Terry Weed
By: Terry Weed, General Manager

10-16-12
Date

EXHIBIT 1 - SCOPE OF WORK

1.0 INTRODUCTION

- 1.1 The TRIBE establishes this Scope of Work as an addendum to the Agreement with the CTS for the purchase of additional fixed route service between Sequim and Blyn in Clallam County, Washington.
- 1.2 The fixed route service will provide week-day service, excluding holidays, between Sequim and Blyn in Clallam County. The service will be provided to the general public, for standard fares, complying with all applicable local, state and federal laws pertaining to such service. The service may continue for additional periods, subject to funding from the Federal Transit Administration.
- 1.3 The goal of the TRIBE and the CTS is to increase transit service to tribal facilities located in Blyn, WA in Clallam County.
- 1.4 The program has set objectives by which progress towards achieving this mission can be measured. The objectives are: Increase ridership, reduce single occupancy trips, and provide consistent, affordable service to Tribal and non-tribal transit customers.
- 1.5 It is the aim of the TRIBE and the CTS to provide effective and efficient public transportation in order to enhance the overall transportation needs of the public and the employees and citizens of the TRIBE.

2.0 MANAGEMENT RESPONSIBILITIES

The CTS shall provide and employ management personnel who are responsible for the overall management, effectiveness and responsiveness of operations, maintenance, administration, and related transit service activities. In addition, CTS's management is responsible for gathering, compiling and submitting to the TRIBE, as needed, reports for planning service improvements. The CTS's management must be able and willing to respond to the TRIBE's reasonable requests, attend regular coordination meetings, coordinate the development and measurement of goals and make decisions as required to ensure a safe, effective and efficient system responsive to the needs and desires of the TRIBE.

3.0 SERVICE DESCRIPTION

- 3.1 The CTS's additional fixed route service covered by this Agreement will encompass the Sequim to Tribal Center route (see attached route map and bus schedule).
- 3.2 The CTS will insure that the vehicles operate on a timely basis to meet the fixed route guidelines set herein and will provide the vehicles necessary to guarantee service in a timely manner.

4.0 OPERATOR REQUIREMENTS

The operator(s) being proposed for this service must meet or exceed all applicable Washington State and Federal standards provided for bus operators. Each individual driver must possess a Commercial Driver's License (CDL), have appropriate endorsements for the vehicle, and have all the necessary training required by the Federal Transit Administration

for the type of vehicle in use. Each individual driver shall not have had DUI or other felony driving convictions within the last five years.

5.0 VEHICLE REQUIREMENTS

Vehicles used by CTS in providing services under this Agreement shall be compliant with American Disabilities Act of 1990. Vehicles must be kept in clean, good condition with no or only minor exterior body damage. All applicable state and federal requirements to operate in the state of Washington, or on the trust and reservation lands of the TRIBE will be the responsibility of The CTS.

6.0 MAINTENANCE OF VEHICLES

- 6.1 The CTS shall be responsible for all maintenance on vehicles operating this service;
- 6.2 The CTS shall have a formal maintenance program in place, conforming to FTA guidelines for maintenance, and which documents all repairs on vehicles, and adherence to periodic maintenance practices as recommended by the equipment manufacturer and FTA;
- 6.3 The CTS shall have an established daily cleaning schedule which assures that each vehicle's interior and exterior is clean prior to going into service; and
- 6.4 Vehicles are subject to inspection by the TRIBE at any time without notification to The CTS during the period of the Agreement.

7.0 INSURANCE COVERAGE

- 7.1 The CTS will be performing work under this Agreement as the TRIBE's independent Contractor. The CTS shall provide and maintain insurance covering all claims arising out of the performance of this Agreement. Minimum insurance requirements are:
 - 7.1.1 A Commercial General Liability policy with a limit of not less than \$1,000,000 per occurrence for personal injury and property damage liability. Such liability insurance shall contain provisions insuring the Contractual liability assumed hereunder;
 - 7.1.2 Workers Compensation affording statutory compensation benefits for all employees with limits of not less than \$500,000 for each accident or disease. Contractors not required by statute to obtain workers compensation insurance must demonstrate to the TRIBE's satisfaction the financial capacity to indemnify the TRIBE against claims from the employees of CTS; and
 - 7.1.3 Commercial Automobile Liability Insurance with a combined single limit of not less than \$1,000,000 per accident for bodily injury and property damage liability arising from owned, non-owned and hired automobiles.
- 7.2 The CTS's General Liability and Auto Liability insurance shall be endorsed to provide that the TRIBE is an additional insured in a form providing no less coverage than that provided to the Contractor. The CTS's insurance shall be primary over any other insurance carried by the TRIBE, including self insurance.

- 7.3 Within 10 days of the execution of this Agreement, and prior to commencing work, the insurance company, or its representative, shall submit an insurance certificate indicating that the TRIBE is an additional insured on the general liability and auto liability insurance policies and providing thirty (30) days prior written notice of material change, cancellation, or non-renewal be given to the TRIBE. The CTS's failure to carry or document insurance coverage shall constitute a breach of this Agreement.

8.0 RECORD KEEPING

A monthly ridership report will be provided to the TRIBE. The TRIBE can request, and CTS will allow, an audit of their records when necessary.

CTS employs a reporting system that tracks incidents, accidents, ridership statistics, customer comments, repairs, maintenance, etc.

EXHIBIT 2 - CONSIDERATION

- 1.0 The CTS agrees to submit to the TRIBE, by the 10th day of each month, an Invoice for Services for the prior month, which shall denote that the following amount is due:
The daily operations cost of \$320.00 x total number of operating service days =
Total billing (for up to a total of \$80,320) for the initial Terms of this Agreement.
The TRIBE agrees to pay the invoiced amount by the end of the month.